Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 76-1260

JAMES W. SMITH, ... PETITIONER,

V.

CHARLES MARTIN, et al., ... RESPONDENTS.

BRIEF OF RESPONDENTS, ROBERT H. HELTON, JR., ROBERT L. ACKERSON, WILLIAM H. BOWLING, ELSIE DOYLE, GLENN DOYLE, ELDON F. KELLER, HARRIET KELLER, WARREN LITTLE, THE FIRST NATIONAL BANK IN LONDON, KENTUCKY, SECOND NATIONAL BANK OF LONDON, KENTUCKY, CORABELL DRISKILL, DON C. EDWARDS, THE FLORSHEIM SHOE COMPANY, INC., JOE HANSON, and ROBERT L. MILBY, IN OPPOSITION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable Warren Earl Burger, Chief Justice of the Supreme Court of the United States

and the Associate Justices of the Supreme Court of the United States.

This is a brief for Robert H. Helton, Jr., Robert L. Ackerson, William H. Bowling, Elsie Doyle, Glenn Doyle, Eldon F. Keller, Warren Little, The First National Bank in London, Kentucky, Second National Bank of London, Kentucky, Corabell Driskill, Don C. Edwards, The Florsheim Shoe Company, Inc., Joe Hanson, and Robert L. Milby, in opposition to the petition of the Petitioner, James W. Smith, for a writ of certiorari to review a judgment of the United States Court of Appeals for the Sixth Circuit.

I. OPINIONS BELOW

The opinion of the Court of Appeals is reported in 542 F.2d 688 and is reproduced in Appendix, pages 1a through 4a, filed with the petition. Orders of the United States District Court entering summary judgment in favor of the Respondent, Robert H. Helton, Jr., and dismissing the Petitioner's complaint as to all other Respondents are reproduced in that Appendix, pages 5a through 8a.

II. JURISDICTION

The jurisdictional requisites are set forth in the Petition.

III. QUESTIONS PRESENTED

The Petitioner's complaint was dismissed only after extensive depositions had been taken in discovery. Accordingly, the questions presented are:

1. Was the United States Court of Appeals correct in affirming the judgment of the United States District Court in dismissing Petitioner's complaint as against the Respondent, Robert H. Helton, Jr., on grounds of judicial immunity.

2. Was the United States Court of Appeals correct in affirming dismissal of Petitioner's complaint as against all other Respondents on the grounds and for the reasons set out in the judgment of the Court of Appeals.

IV. STATEMENT OF THE CASE

As recited in the opinion of the Court of Appeals, this action was brought under 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. §§ 1981-1988 for $2,000,000.00 damages against the 23 Respondents who were charged with conspiring to deprive the Petitioner and his clothing and apparel business of the equal protection of the laws of the State of Kentucky and of the laws of the United States of America. The complaint is set out in Petitioner's Appendix, pages 10a-27a. It charged that the conspiracy, which commenced January 8, 1971, was accomplished, inter alia, by filing false complaints in

the State Circuit Court with the result that orders were issued restraining the Petitioner from entering his place of business which was padlocked by Court order, and that these and other consequences resulted in Petitioner's loss of national franchises with apparel manufacturers and in the appointment of a receiver for the complete liquidation of his business inventory.

The complaint alleged that the Petitioner and the Respondents, Elsie Doyle, Glenn Doyle, and William H. Bowling, operated two clothing and apparel stores, one at London and one at Danville, Kentucky, as partners under the name of "His & Hers Shoppe." However, the evidence shows that articles of incorporation of "His and Hers Shoppe of London, Inc.," and of "His and Hers Shoppe of Danville, Inc.," and certificates of incorporation by the Secretary of State of the Commonwealth of Kentucky were filed and issued on November 4, 1970. The articles of incorporation were signed and acknowledged by the Petitioner and Elsie Doyle, Glenn Doyle, and William H. Bowling as subscribing stockholders. We fail to find an allegation in the complaint that the corporations "had commenced no business and had no assets."

The 23 Respondents are of three categories, (1) Judge of the State Circuit Court, (2) State public officers acting under color of State law whose duties

are related to the judicial process, and (3) private citizens not acting under color of State law.

The Respondent, Robert H. Helton, Jr., is the Judge of the State Circuit Court, a court having "original jurisdiction of all matters, both in law and in equity" and admittedly having jurisdiction of the subject-matter and parties involved in the litigation referred to in Petitioner's complaint. The United States Court of Appeals affirmed summary judgment in favor of Judge Helton on the ground of judicial immunity, an immunity not abolished by the Civil Rights Act. *Pierson* v. *Ray*, (1967) 87 S.Ct. 1213, 1217-1218, 386 U.S. 547, 18 L. Ed. 2d 288.

In addition to the ground that a stockholder cannot maintain an action under the Civil Rights Act for damages suffered by a corporation in which he owns shares (Erlich v. Glasner, 418 F.2d 226, 9th Cir. 1969), the Court of Appeals cites other reasons for affirming dismissal of Petitioner's complaint as against all other Respondents. Thus, it held that the Respondents, Eldon F. Keller (Circuit Court Clerk), Harriet Keller (Deputy Circuit Court Clerk), and Corabell Driskill (Receiver appointed by the State court and acting under its orders), the Sheriffs, and other State governmental officers whose duties are related to the judicial process, are insulated from personal liability when they, without malice or corrupt motive, carry out orders of a court, as here (*Sullivan* v. *Kelleher*, 405 F.2d 487).

The Respondents, Robert L. Ackerson, William H. Bowling, Elsie Doyle, Glenn Doyle, Warren Little, The First National Bank in London, Kentucky, Second National Bank of London, Kentucky, Don C. Edwards, The Florsheim Shoe Company, Inc., Joe Hanson, and Robert L. Milby, are private citizens not acting under color of State law. Dismissal of Petitioner's complaint as to them and other Respondents in the same category was affirmed on the ground that they cannot be held liable for conspiracy to deny a citizen the equal protection of the law in the absence, as here, of a racial, class-based, invidiously discriminatory animus behind the conspirators' actions (*O'Neill* v. *Grayson County War Memorial Hospital*, 472 F.2d 1140, 6th Cir. 1973; *Cameron* v. *Brock*, 473 F.2d 608, 6th Cir. 1973; *Azar* v. *Conley*, 456 F.2d 1382, 6th Cir. 1972).

V. ARGUMENT

These Respondents respectfully maintain that the Petition herein does not present any special or important reason for granting a writ of certiorari. The Petitioner does not claim that the decision of the Court of Appeals herein is in conflict with another Court of Appeals on the same matter, or is in conflict with applicable decisions of this Honorable Court, or that it decides an important question of federal law which has not been, or should be, settled by this Court.

The Petitioner merely repeats here his arguments advanced before the Court of Appeals that the clothing and apparel business was a partnership, not a corporation, whereby he is a real party in interest, and that Judge Helton "doffed his robe of judicial immunity by his participation in a conference held in the office of respondent, Cato," the Petitioner's attorney at the time. Both arguments were very carefully considered by the Court of Appeals.

Considering the grounds recited by the Court of Appeals for affirmance of the dismissal of the Petitioner's complaint, such grounds would apply even were the business considered to be a partnership. Thus the Court of Appeals said, "Although appellant is correct in his contention that the court did not consider his claim of a conspiracy to injure him as an individual, we nevertheless hold that the action was properly dismissed."

Regarding Petitioner's claim that Judge Helton "doffed his robe of judicial immunity by his participation in a conference" in the office of the Petitioner's attorney, the Court of Appeals said:

> "Extensive depositions were taken from which it clearly appears that Judge Helton's role throughout the litigation in state court was solely that of a duly qualified circuit judge acting within his judicial jurisdiction. Accord-

ingly, contrary to appellant's contention, Judge Helton did not lose his judicial immunity by conducting a settlement conference in a place other than his courtroom at which all parties were present with their attorneys."

That this action does not present serious or important questions of federal law is borne out by the concluding paragraph of the opinion of the Court of Appeals where it is said:

> "This appeal presents issues similar to those in Stathas v. Cox, No. 76-1571 (6th Cir., decided Aug. 5, 1976) in which a special panel of this court appointed pursuant to Sixth Circuit Rule 3(e) determined that the questions presented there were properly cognizable by the state courts, and held that the appeal was so unsubstantial as to permit summary affirmance under Sixth Circuit Rule 8. See also, Graves v. Sneed, No. 75-1746 (6th Cir., decided Sept. 1, 1976), where Chief Judge Phillips stated, 'This case involves yet another effort to make a federal question out of litigation where exclusive jurisdiction is in State courts.' "

VI. CONCLUSION

For the reasons set forth above, these Respondents respectfully submit that the petition for certiorari should be denied.

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CERTIFICATE OF SERVICE

This is to certify that the foregoing Brief of Respondents in opposition to Petition of James W. Smith for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit has been served upon the Petitioner, James W. Smith, by mailing true copies thereof to his attorney, Honorable Howell W. Vincent, 130 Park Place, Covington, Kentucky 41011, and upon other Respondents below by mailing true copies thereof to their attorneys below, to-wit: Honorable James F. Clay, 319 West Main Street, Danville, Kentucky 40422; Honorable William W. Hensley, First National Bank Building, Corbin, Kentucky 40701; Honorable Lester H. Burns, P.O. Box 675, Burnside, Kentucky 42519.

This 8th day of April, 1977.

s/ Grant F Knuckles

Of Counsel for Respondents named in foregoing Brief

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